

*Community
Legal Service*



Racial discrimination

Your legal rights

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16

You don't have to put up with discrimination or harassment because of the colour of your skin, or your ethnic group. There are powerful laws to stop this happening. This leaflet explains your legal rights, and what to do if you are discriminated against.

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When discrimination can happen

Discrimination happens when someone is treated worse ('less favourably' in legal terms) than another person in the same situation. This leaflet deals with your rights if you are discriminated against because of your:

- race;
- colour;
- nationality; or
- national or ethnic origin.

Throughout this leaflet, we use the words 'race' and 'racial' to cover all of these things.

People may suffer discrimination for a number of reasons. It can happen :

- at work;
- when buying or using goods and services;
- when trying to buy or rent somewhere to live; or
- at a school or college.

The law protects you from many kinds of discrimination and gives you the right to take a claim to an employment tribunal or to a court if you think you have been unfairly treated.

There are two other Community Legal Service leaflets which you may also find useful:

- 'Equal opportunities', looks in more detail at the laws on discrimination because of your sex, and also at your rights if you are discriminated against because of your age, your religious beliefs or if you are lesbian or gay.
- 'Rights for people with disabilities', which looks at dealing with discrimination if you

have a disability.

You may find that you are discriminated against for more than one reason. If this is the case, you may need to get advice about the best course for action. You can get advice from:

- a trade union;
- your local law centre;
- a Citizens Advice Bureau; or
- a solicitor.

Racial discrimination is not the same as racial abuse (being attacked, for example). Racial abuse is a crime, and if you have been a victim, you should report it to the police. See 'Racial harassment' on page 5 for more about this.

What the law says

The Race Relations Act 1976 protects you against many kinds of racial discrimination and harassment. It also gives you the right to challenge unfair treatment in the courts or at an employment tribunal. Also, taking someone to court or to a tribunal may change the way an organisation behaves, so that other people are not discriminated against.

The Race Relations (Amendment) Act 2000 extends the original Act. It makes racial discrimination by organisations that enforce the law, such as the police, unlawful. This law also says that government departments and other public organisations must have policies to promote racial equality.

Although many cases of discrimination are by white people against black and Asian, for example, white people, too, may complain of discrimination.

Direct and indirect discrimination

The law on equality talks about two types of discrimination:

- Direct discrimination is when you are treated less favourably because of your race.
- Indirect discrimination is where there are rules or conditions which apply to everyone, but which affect one group of people more than others, where there is no good reason for the rule. For example, a company rule that employees must not wear headgear could exclude Sikh men who wear a turban.

Sometimes, what seems like discrimination may be allowed. For example, it could be legal to say that someone working for a charity providing welfare services especially for the Bangladeshi community should also be Bangladeshi.

Victimisation

If you want to complain about being discriminated against (or if you are helping a colleague who is complaining), you may fear that your employer may, for example, treat you less favourably for this reason. If they do, this is called victimisation, and it is unlawful in the same way discrimination is.

There are four main areas covered in this leaflet where discrimination may happen:

- At work (see right).
- When you are renting or buying somewhere to live (see page 6).
- At school or college (see page 6).
- When you are buying or using goods or services (see page 7).

Discrimination at work

It's unlawful for an employer to discriminate against you because of your race, when choosing someone for a job, and when deciding which staff will be:

- promoted;
- given benefits at work, such as training;
- dismissed; or
- made redundant.

The law also protects you against harassment at work. If you suffer racial abuse at work, you may be able to take legal action against your employer if they do nothing to stop it. You can take a case to an employment tribunal (see 'Going to an employment tribunal' on page 9).

In a harassment case, you may also be able to take action against the person who is harassing you or your employer in court under the Protection from Harassment Act 1977.

Applying for a job

It is unlawful for an employer to discriminate against you because of your race when choosing someone for a job. It covers three areas.

- When deciding who should be offered the job. This includes the job description, the 'person specification' (the description of the skills, experience and qualifications needed to do the job), the application form, the short-listing process, interviewing and final selection.
- The terms of the employment contract, such as pay, holidays or working conditions.
- By deliberately not considering your application.

Refusing you a job because of your race would be direct discrimination. But if your employer will not let you work different hours, or wear different clothing for reasons to do with your ethnic group, without a good reason, you may have a claim for indirect discrimination. An employment tribunal would have to decide whether what the employer did was fair or not.

The Race Relations Act covers contract, self-employed and part-time workers as well as full-time or permanent staff. It also applies to recruitment agencies, unions and professional bodies which award qualifications.

When an employer is allowed to discriminate

For a few types of job, employers are allowed to make a person's race a 'genuine occupational qualification' (GOQ). For example:

- acting in plays or films;
- certain jobs in cafes or restaurants; or
- for personal welfare services to people of a particular racial group.

The Commission for Racial Equality can advise you on whether a GOQ is likely to apply to a job or not, and on whether a job advertisement which mentions race is lawful.

The Race Relations Act also doesn't cover working for a private household, or jobs where you have to work outside Great Britain all of the time.

For some jobs, it's unlawful to discriminate because of your colour, but lawful to discriminate because of your nationality or ethnic origin. For example, for some jobs where the Crown is the employer, you must be a British citizen, a Commonwealth citizen, or a citizen of a European Union country.

Being dismissed or made redundant

An employer must not racially discriminate when dismissing people or making them redundant. This means that, for example, if you're dismissed for often being late but someone of a different colour with equally bad timekeeping is not, that could be direct racial discrimination.

Racial harassment

Racial harassment at work is unwanted behaviour of a racial nature (not just racist abuse) by other employees which creates an intimidating, hostile or humiliating atmosphere.

If the person harassing you does not stop after you have asked them to, you should complain to your employer (unless they are the one harassing you). The Race Relations Act says that employers are responsible for any racial discrimination by their employees and clients.

Many employers treat racial harassment by their staff as a disciplinary offence, and they should discipline the person harassing you. If your employer does not do anything, you can take a claim against them to an employment tribunal. In many cases you could also take the person harassing you, or your employer, to court.

In many cases, you could also consider a claim for:

- assault against the person harassing you; or
- negligence or breach of contract against your employer.

If you are attacked you should report it to the police. Under the Crime and Disorder Act 1998, harassment or assault which has a racist motive may carry a higher penalty for the person who has attacked you.

Discrimination when renting or buying a house or flat

It's unlawful for someone to discriminate against you because of your race when they are selling or letting property. So a landlord cannot, for example, refuse to let a house to a black person because of their colour. It is also unlawful for a landlord to discriminate in the way they treat tenants. The law applies to business premises, too.

The Race Relations Act does not apply where the landlord (or a near relative) lives in the property and shares some of the living space with the tenant (which includes a bathroom or kitchen, but not just a hall, staircase or entrance).

If you are a council or housing association tenant and you are racially harassed by other tenants, you should tell the council or housing association. Many organisations have policies to protect tenants against harassment. They may take out an 'injunction' through the courts, to get the people to stop harassing you. They may also be able to evict them.

Discrimination at school or college

The Race Relations Act says that a school or college must not discriminate against you or your child, for example:

- when choosing who to admit;
- when deciding whether to exclude a pupil or student; and
- in the way classes are taught.

The school or college must also deal with any racial harassment or abuse by staff or other students. The Race Relations Act also makes it unlawful for a local education authority to discriminate when assessing a child's special needs.

If you feel your child is facing racial discrimination, you should first try to discuss the problem with the teacher or headteacher. The Department for Education and Employment has information about dealing with this (see 'Further help' on page 11 for contact details).

If that doesn't work, complain to the school governors or the local education authority. If you need to, you can get advice on what to do from:

- the Commission for Racial Equality;
- your local Racial Equality Council; or
- the Advisory Centre for Education helpline.

See 'Further help' on page 11 for details.

If you are a student, your college or university should have an equal opportunities policy for students as well as staff.

Discrimination when buying and using goods and services

It is unlawful for organisations to racially discriminate against you in the 'goods, facilities and services' they provide. This means refusing a service to you because of your race, or deliberately not providing it on the same terms and of the same quality. It covers things that are free, as well as those you pay for. It covers many businesses and services, including:

- shops;
- public places, such as hotels, restaurants, bars, nightclubs and leisure centres;
- bank accounts, loans, credit cards and insurance;
- travel and transport services that are either public or offered by private companies and travel agents; and
- services supplied by local authorities (such as leisure services).

There are some types of organisations to which the Race Relations Act does not apply. These include voluntary bodies, care homes and charities whose main purpose is to provide services to a particular racial or ethnic group.

Discrimination by public authorities

The Race Relations (Amendment) Act 2000 makes it unlawful for law-enforcement authorities to racially discriminate in the way they treat suspects or prisoners, for example. It covers, among other organisations:

- the police;
- government departments and local councils;

- tax inspectors;
- the probation service;
- the prison service; and
- Customs and Excise.

The law also applies to private companies carrying out a public role (for example, a private security company working for the prison service).

The Act also makes race discrimination by immigration officers unlawful, except where what they do is:

- specifically allowed by immigration laws; or
- authorised by a government minister.

Discrimination because of your religious beliefs

The Race Relations Act does not protect you from discrimination which is just because of your religion. However, you may be able to bring a claim under the Act if the discrimination is because of your national or ethnic origin, as well as your religion (for example, if you are Muslim and Pakistani). You will need to get legal advice as to whether this would be the case.

What you can do about discrimination

If you have been discriminated against, first think about what you want to be done. Depending on how you were discriminated against, you may want:

- your job back;
- compensation;
- an apology; or
- a clear sign that an organisation won't discriminate in the same way in future.

Whatever you want, it is usually best to first try to sort out the matter with the person or organisation who has discriminated against you (your employer, or the service provider, for example).

If complaining in this way doesn't get you what you want, you may be able to take your case to:

- an employment tribunal if it is about a job; or
- the county court.

The Commission for Racial Equality is an organisation set up by the government to promote racial equality. It can advise and help you if you have been discriminated against because of your race.

You can also get help from:

- your union if you have one (if it is about a job);
- your local law centre;
- a Citizens Advice Bureau; or
- your local Racial Equality Council.
- a solicitor or adviser displaying the

Community Legal Service logo (see 'The Community Legal Service' on page 11 for more about this).

See 'Further help' on page 11 for how to contact these organisations.

The Commission for Racial Equality can sometimes give you legal help to take your case to court, so that you don't have to pay a solicitor to do this for you. To get this, you need to apply on a special form, available from the Commission for Racial Equality. If they cannot give you legal representation, they can put you in touch with other agencies or solicitors who may be able to help.

If your case is about discrimination at work, the Advisory, Conciliation and Arbitration Service (ACAS) may also be able to help. It can try and help you come to an agreement with your employer (about a promotion or compensation, for example) without you having to go to a hearing. If you cannot come to an agreement with your employer (or former employer), you can still take your case to an employment tribunal. However, there are time limits for doing this (see 'Going to an employment tribunal', on page 9).

If the tribunal or court rules that you have been unlawfully discriminated against, it can award you compensation for:

- loss of earnings; or
- injury to your feelings; or
- personal injury caused by the discrimination.

Going to an employment tribunal

If you want to make a complaint under the Race Relations Act, you must send your complaint either on form ET1 or in a letter to the Regional Office of Employment Tribunals. You can get this form from:

- jobcentres; or
- the Commission for Racial Equality.

The employment tribunal will then decide whether there are 'reasonable grounds' for going ahead with a claim. You must make your complaint within three months, minus one day, from when the discrimination first happened. The cost of going to a tribunal is low. Even if you lose your case, you will not have to pay the other side's costs unless the tribunal decides your claim was unreasonable.

If you do want to take a complaint to an employment tribunal, you would normally send a special form, called a 'Section 65' questionnaire, to the employer. You can get this form from:

- jobcentres;
- your local benefits office; or
- the Commission for Racial Equality.

The form has questions where the employer will give more reasons for the treatment you received. For example, if you believe that you didn't get a job because of your race, you can ask for details of the employer's selection procedures, and of the qualifications and experience of the person who got the job, to see how they compare with your own.

You must send the form to the employer within three months of when you first knew about the discrimination, or no more than 21 days after your complaint was received by the employment tribunal.

You don't have to use the 'Section 65' procedure, but it will normally help your case. In the same way, the employer doesn't legally have to fill in the form, but if they don't, it may harm their case. And if you do use it, you can still withdraw your complaint before your case is dealt with.

You or the employer can appeal against the tribunal's decision to the Employment Appeals tribunal. But you can appeal only on whether the law was applied correctly, not on whether you thought the tribunal's decision was fair. You have 42 days after the decision to start an appeal.

Going to court

If you want to take a case to court, you must start your case within six months minus one day from when you first knew about the discrimination. The court can give you copies of the claim form N1 and more information about procedures.

How will I pay for my case?

If you are claiming less than £5,000, your case can be dealt with fairly simply and cheaply on the 'small claims track'. If you do this, you won't need a solicitor to represent you, but you should get advice before starting your claim.

If you are claiming more than £5,000, you need to think carefully about how you will pay for your case, because the costs can be very high. If you cannot afford to pay for court action yourself, there are several ways you may be able to pay for your case. These are:

- The Commission for Racial Equality may take on your case, for example, as a 'test case'.
- You may be able to get funding from the Community Legal Service (formerly called Legal Aid), provided you meet certain conditions. See 'The Community Legal Service' on page 11 for how to find out more about this.
- You may be able to find a solicitor who will take on your case under a 'no-win, no-fee' agreement. See the Community Legal Service leaflet 'No-win, no-fee actions' for more about this.

The Human Rights Act

The Human Rights Act 1998 has a wide-ranging discrimination provision which includes types of discrimination that are not covered in other discrimination laws. However, it can be used only when it is part of one of the other 'articles' (the specific principles) of the act, such as the right to 'respect for private and family life'.

Also, rights under the act can only be used against a public authority (for example, the police, a local council or the Benefits Agency), and not a private company. However, court decisions on discrimination will generally have to take into account what the Human Rights Act says.

Further help

A Citizens Advice Bureau can offer advice and help with a range of problems. Your local Citizens Advice Bureau is listed in the phone book. Information is also available on its website at: www.nacab.org.uk/cabdir.ihtml

Commission for Racial Equality

phone: 020 7828 7022
www.cre.gov.uk

For your nearest Racial Equality Council, contact the Commission for Racial Equality or see the phone book

The Advisory, Conciliation and Arbitration Service (ACAS)

To find your nearest public inquiry point
phone: 020 7210 3613
www.acas.org.uk

Advisory Centre for Education (ACE)

For advice about racial discrimination at school
phone: 020 7354 8321 (Monday to Friday 2pm to 5pm)

Department for Education and Employment (DfEE)

For the leaflet '10/99 'Social Inclusion: Pupil Support'
phone: 0845 6022260

The Community Legal Service

The Community Legal Service (CLS) is run by the Legal Services Commission, a public organisation which has replaced the Legal Aid Board.

A key aim of the CLS is to make sure that people find the right legal help easily and can be confident of the service they get. All legal services providers in the CLS must meet quality standards set by the Legal Services Commission before they can display the CLS logo (shown on the front cover of this leaflet). The CLS also includes a scheme for funding civil cases (formerly legal aid).

There are CLS Information Points in local libraries and many other public places, which have information leaflets and the CLS Directory of Services. The Directory lists lawyers and advice centres which have met the CLS quality standards, and many others.

You can also phone 0845 608 1122
(minicom: 0845 609 6677)

to find out about advice centres and lawyers in your area, or visit the CLS website at: www.justask.org.uk.

About this leaflet

This leaflet is one of a series produced by Consumers' Association for the Legal Services Commission (LSC). Consumers' Association (CA) is the largest independent, not-for-profit consumer organisation in Europe. CA is committed to empowering consumers to make informed decisions about goods and services. For more information, visit CA's website at www.which.net.

To find out more about the LSC, visit the www.legalservices.gov.uk website, or contact your regional LSC office. Its address is in the phone book. There are also leaflets about LSC funding on the website or from the LSC leaflet line on 0845 3000 343



COMMISSION FOR RACIAL EQUALITY

This leaflet was written by
Consumers' Association in association
with the Commission for Racial Equality

This leaflet is one of a series being produced in 2001.
All the titles below should be available by summer
2001 in a number of languages and formats. The
leaflets will also be online at www.legalservices.gov.uk

- 1 Dealing with debt
- 2 Employment
- 3 Divorce and separation
- 4 Renting and letting
- 5 Buying and selling property
- 6 Losing your home
- 7 The Human Rights Act
- 8 Claiming asylum
- 9 Welfare benefits
- 10 Wills and Probate
- 11 Dealing with the police
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- 17 Personal injury
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- 20 Education
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- 22 Mental health
- 23 Alternatives to Court

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